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11 IN THE UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

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15 MARGARET AGBOWO and CASE NO.: 14-cv- 001295-LB
16 THERESA AGBOWO,
17 Plaintiffs,
18 vs.

19 NATIONSTAR MORTGAGE LLC
20 and Does 1 to 100,

Defendants.

Courtroom: C, 15th Flr.
Judge: Hon. Laurel Beeler

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22 _____ /
23 PLAINTIFFS, Margaret Ogbowo and Theresa Ogbowo (hereinafter "Plaintiffs")
24 complain and allege as follows:

PARTIES AND VENUE

25 1. At all times mentioned herein, Plaintiffs have been residents of Alameda County,
26 California.

27 2. Jurisdiction of the subject matter in this Court is proper because the cause of
28 action herein arose in Alameda County, California by virtue of Mortgage loan and related inter-
temporal transactions associated therewith which concern the Plaintiffs' primary residential real
estate which is located at 853 51st Ave, Oakland, CA, (hereinafter, referred to as "subject
property") within Alameda County, California which is within this Judicial District. That

Plaintiffs reside in this home and have resided therein for the last 7 years.

3. Venue of this action is proper with this Court as least one name Defendant subject to suit within this Court, and thus all Defendants are properly sued in this Court.

4. On information and belief, Plaintiffs allege that Defendant Nationstar, hereafter referred to as Defendant is a federally charted bank, regulated by the Office of the Comptroller of Currency, Department of Treasury. Defendant is the beneficiary of a promissory note secured by a deed of trust on the above property. Plaintiffs have been working with the Nationstar Mortgage Modification Department to obtain a mortgage modification. Defendant has offices throughout the state of California and routinely does business in California.

5. The true names and capacities, whether individual, corporate or otherwise of Does 1 through 50, inclusive, are unknown to Plaintiffs are presently unaware of facts which would give rise to a cause of action against said Doe Defendants, and therefore sue said Defendants by such fictitious names and will seek leave of court to amend the complaint to show their true names and capacities when the same are ascertained. Plaintiffs will make all allegations necessary and proper to charge said Defendants herein, all of whom are responsible in some manner for the events and happenings herein referred to, proximately causing damages to Plaintiffs.

JURISDICTION

6. The jurisdiction of this court is based on C.C.P § 88; Cal. Const., Art. VI, section 10, Code Civ. Proc., section 88.

7. Venue is proper in Alameda County, California because the parties, acts, and/or events that are the subject of this action took place in Alameda.

STATEMENT OF FACTS

8. Plaintiff, MARGARET AGBOWO and THERESA AGBOWO, signed an Adjustable Note dated September 7, 2006. This note was in the sum of \$417,000.00 payable to Home Loan Specialists. This note was not signed by Lazarus Agbowo. (Exhibit "A") For some reason his signature is included on the deed of trust, date 9-21- 2006. The property located at 530 53rd Street Oakland and 5301 Genoa Street. Although this is one building it is designated as a

1 duplex by the City of Oakland, California. The upstairs portion has one address and the
 2 downstairs has the other address. Although the property was purchased in 2006 Margaret did not
 3 occupy the property as her principal residence until 2008. This delay was the result of the
 4 condition of the property when it was purchased. The property had to be repaired and was
 5 remodeled to fit the needs of Margaret. Since the property remodel was finished in 2008 this has
 6 been the primary residence for Margaret. Proof of her residency has been provided to Nationstar
 7 on more than one occasion.

8 9. This note was transferred to Aurora Loan Services. As the result of an error on
 9 the part of plaintiffs the property taxes were not paid. Aurora demanded that the property tax
 10 arrears be paid in a single payment. Plaintiffs lacked the financial means to pay the property tax
 11 arrears in a single payment. Aurora then refused to receive the regular monthly payments until
 12 the property tax arrears had been paid, in a single payment.

13 10. In November 2009 plaintiffs applied for a mortgage modification with Aurora
 14 Loan Services. Aurora reviewed the request for mortgage modification and offered them a trial
 15 payment plan. After the trial payment plan was completed, Aurora did not offer plaintiffs a
 16 mortgage modification package, nor deny the mortgage modification. At that time Aurora
 17 transferred the note and deed of trust to Nationstar.

18 11. On March 11, 2011, Margaret Agbowo filed a Chapter 13 in an attempt to save
 19 her home. Margaret was informed sometime after she filed the Chapter 13 that it would not save
 20 her home. The Chapter 13 was voluntarily dismissed by Margaret in June 2012.

21 12. Plaintiffs prepared a mortgage modification request and third party authorization
 22 was submitted to Nationstar on or about August 30, 2012. (Exhibit "B") Plaintiffs hired Hyatt
 23 Chaghouri to assist in the mortgage modification process. Margaret Agbowo is a school teacher
 24 and is unable to receive or return telephone calls only during normal business hours. Hyatt was
 25 available to receive and return telephone calls during this time. The complete package for a
 26 mortgage modification was faxed to Nationstar on October 10, 2012. (Exhibit "C")

27 13. From November 2012 to July 25, 2013 Nationstar submitted 11 requests for
 28 additional information. Plaintiffs responded to each of these demands. Plaintiffs submitted a

1 complete loan modification plan and as shown by Exhibit "D" submitted many of the required
 2 documents were submitted several times. A chart of the documents submitted, with abbreviated
 3 descriptions of the documents is attached as Exhibit "E".

4 14. Nationstar in a letter dated July 25, 2013, stated that plaintiffs request for
 5 mortgage modification was denied due to a lack of providing all of the required document.
 6 Exhibit "F" Hyatt had called Nationstar Mortgage Modification center earlier in July, 2013, and
 7 after lengthy time on the telephone was able to get the person she was working with to find all
 8 the required documents. This person further stated that with all the required documents there, the
 9 request for mortgage modification was being sent to the underwriter.

10 15. Nationstar's letter giving notice of the rejection of the loan modification merely
 11 state that plaintiffs could call a telephone number to discuss the reason for the denial. This
 12 statement does not explain plaintiffs right to contest the denial and have an opportunity to present
 13 their position and have the denial fully reviewed.

14 16. On July 30, 2013, a Request For Mortgage Modification was faxed to Nationstar.
 15 This request was accompanied by a complete list of items required for the mortgage modification
 16 to be reviewed. Nationstar did not object to this mortgage modification request. Nationstar
 17 accepted this request for mortgage modification as is shown by the request for more documents
 18 which were faxed on August 22, 2013. This was followed by another request for documents
 19 which were faxed to Nationstar on September 23, 2013. A list of the items faxed to Nationstar is
 20 contained in Exhibit "G".

21 17. Nationstar recorded a notice of trustee's sale on August 28, 2013. (Exhibit "H")
 22 This notice set September 26, 2013, as the date for the foreclosure sale. The foreclosure sale date
 23 was just 3 days after the last request for documents complied by faxing the documents to
 24 Nationstar. Nationstar was prohibited by CC §2923.6 (c) from recording the notice of the
 25 trustee's and conducting the trustee's sale.

26 18. In November 2013 Margaret received a letter from an attorney that was retained to
 27 assist the new owner of the property (Nationstar) gain possession on November 14, 2013.
 28 (Exhibit "I") This letter was the first notice received by plaintiffs that the September 28, 2013,

1 foreclosure sale had been conducted. This attorney was contacted and informed that plaintiffs
 2 considered Nationstar's conduct to be dual tracking. A copy of the notes from Hyatt showing the
 3 dates and documents that were provided to Nationstar, were faxed to this attorney, and who then
 4 sent them to Nationstar. No further action was taken by Nationstar to evict Margaret from the
 5 home.

6 19. Plaintiffs received notice that their second request for mortgage modification had
 7 been rejected in a letter dated December 3, 2013. The stated reason for this rejection was that
 8 they were unable to verify that property was owner occupied by Theresa. Plaintiffs were
 9 contacted some time later in December, 2013, by a representative of Jorge Losada, the new owner
 10 of the property. Mr. Losada had purchased the property from Nationstar on December 3, 2013.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA CIVIL CODE SECTION 2923.6 (c) & (d)

FIRST REQUEST OF MORTGAGE MODIFICATION SUBMITTED ON OR ABOUT AUGUST 2012

15 20. Plaintiffs incorporate paragraphs 1 through 19 as set forth in full herein.

16 21. Plaintiffs will refer California Civil Code as CC. Defendants violated CC
 17 §2923.6 (c). This section prohibits a first lien servicer from recording a notice of default or
 18 notice of default sale or conduct a trustee's sale while a complete loan modification loan
 19 application is pending.

20 22. Plaintiffs submitted a complete loan modification package to Nationstar on
 21 October 10, 2012, see Exhibit "C" for a complete list of documents sent to Nationstar along with
 22 the request for mortgage modification. Additional requests for documents were made by
 23 Nationstar. Plaintiffs responded to each request for additional documents in a timely manner.

24 23. Plaintiffs submitted a complete mortgage modification request to Nationstar. The
 25 submission of the completed mortgage modification form satisfied the requirements of CC
 26 §2923.6 (c). This code section prohibits the recording a notice of default or a trustee sale until
 27 one of the three occurs:

28 (1) The mortgage servicer makes a written determination that the borrower

1 is not eligible for a first lien loan modification, and any appeal period pursuant to
 2 subdivision (d) has expired.

3 (2) The borrower does not accept an offered first lien loan modification
 4 within 14 days of the offer.

5 (3) The borrower accepts a written first lien loan modification, but defaults
 6 on, or otherwise breaches the borrower's obligations under, the first lien loan
 7 modification.

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 12 Here Nationstar gave a bad faith written statement denying the mortgage modification. Plaintiffs
 13 had already confirmed that all of the required documents had been received. The denial of the
 14 mortgage modification was on the ground that not all of the required documents had been
 15 submitted. Further the July 25, 2013 written notification of the denial did not properly notify
 16 plaintiffs that they had the right to a review of the decision. The notice merely stated that they
 17 could call the provided number to discuss the denial.

18 24. This statement does not meet the requirement of CC §2923.6 (d) which provides
 19 as follows:

20
 21 (d) If the borrower's application for a first lien loan modification is denied, the
 22 borrower shall have at least 30 days from the date of the written denial to appeal
 23 the denial and to provide evidence that the mortgage servicer's determination was
 24 in error.

25
 26 Stating that plaintiffs could call and discuss the denial is not the same as an appeal in which they
 27 could provide evidence that the servicer's determination was in error.

28 25. The recording of the notice of trustee's sale was only 33 days after the letter of
 29 denial was written. There is no evidence as to when it was mailed. California Civil Procedure
 30 provides that a notice mailed to another state requires that an additional 10 days be added to the
 31 time for service. The notice provided in CC §2923.6 (d) is 30 days. The notice required by CC
 32 § 2923.6(e)(1) is 31 days after the borrower is notified in writing. California Code of Civil
 33 Procedure provides that when mailing notice to another state that 10 shall be added to the
 34 statutory notice time. Nationstar is located in Texas and therefore the additional 10 days for
 35 mailing should be applied here. Thus the trustees sale could not have been recorded until 41 days
 36 from the date of the written notice had passed.

1 26. As a direct and proximate result of Nationstar violating CC §2923.6 (c) and (d)
2 plaintiffs suffered economic loss and the loss of use of the home that had been remodeled to meet
3 the needs of Margaret. Resulting in economic damages in the sum of \$750,000.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA CIVIL CODE SECTION 2923.6 (c) & (d)

SECOND REQUEST OF MORTGAGE MODIFICATION SUBMITTED ON OR ABOUT

JULY 26, 2013

8 27. Incorporate herein as though set forth in full paragraphs 1 through 26 above.

9 28. Plaintiff's submitted a second request for mortgage modification on or about July
10 26, 2013. California Civil Code 2923.6 (g) states that when a borrower has been afforded a fair
11 opportunity to be evaluated the servicer is not required evaluate a loan modification submitted by
12 the borrower. Nationstar may not have been required to consider a second request for mortgage
13 modification, when the second request for mortgage modification was submitted and accepted it
14 prohibited Nationstar from recording the notice of trustee's sale. The notice of trustees sale was
15 recorded on August 28, 2013, during the time that plaintiffs' mortgage modification was being
16 considered.

17 29. Plaintiffs second request for mortgage modification was complete at the time it
18 was submitted. See the first page of Exhibit "G", bates stamped 20. This application consisted
19 of 32 pages.

20 30. Nationstar requested additional information which was faxed on August 23, 2013.
21 The request was for 3 items: 1. Last quarter profit and loss statement; 2. Bank statement to show
22 proof of the rental income of \$1,800 per month; 3. Margaret's last pay stub. Each of these items
23 were included in the request for mortgage modification submitted on or about July 26, 2013.

24 31. Further information was requested and the response was faxed on September 23,
25 2013. This request was for verification of the loan number and the address of the property. This
26 Profit and Loss statement for Lazarus Tax Services was requested for the first time.

27 32. These requests for additional information show that this mortgage modification
28 was being considered. Rejection of this request for modification was contained in a letter dated

December 3, 2013.

33. Nationstar violated the HOBR twice. First they recorded a notice of a trustees sale while the request for mortgage was being considered; Second the foreclosure sale was conducted during the consideration of the mortgage; Third the foreclosure took place sooner than 31 days after the notice of rejection.

34. As a direct and proximate result of Nationstar violating CC §2923.6 (c) and (d) plaintiffs suffered economic loss and the loss of use of the home that had been remodeled to meet the needs of Margaret. Resulting in economic damages in the sum of \$750,000.

THIRD CAUSE OF ACTION

VIOLATION OF UNFAIR DEBT COLLECTION PRACTICES

35. Incorporate herein as though set forth in full paragraphs 1 through 35 above.

36. Nationstar holds itself out as a debt collector, see the notice of rejection of the request for loan modification dated July 25, 2013(Exhibit "F") and December 3, 2013 (Exhibit "J")

37. In July 2013 plaintiffs' agent, Hyatt, contacted Nationstar's mortgage modification department. After a lengthy telephone conference, Hyatt was told that all of the required documents were in the file, for the mortgage modification. The request for mortgage modification was to be sent to the underwriter that day.

38. The rejection letter dated July 25, 2013, stated the required documents were not provided and the mortgage modification could not be evaluated. The lack of required documents statement is contrary to the previous statement that all of the required documents were in the file.

39. Nationstar's conduct following the second request form mortgage modification violates 15 USC 1692e (10). This code section prohibits the use of false or deceptive means to collect a debt. California's Rosenthal Fair Debt Collection act at CC §1788.17 requires that debt collectors follow the requirements of 15 USC 1692b through 15 USC 1692i.

40. Nationstar used deception by giving the false impression to plaintiffs that their mortgage modification request faxed on July 30, 2013 was being processed in good faith. As a direct and proximate result of this deception plaintiffs did not take any further steps to protect

Margaret's home.

41. The intent to deceive plaintiff's is shown by the notice of rejection dated December 3, 2013. (Exhibit "J") Further the rejection was in bad faith as it stated the grounds for rejection was their in ability to verify that it was Theresa's residence. Nationstar's position that time was that all parties signing the promissory note were required have the subject property as their primary residence.

42. As a direct and proximate result of the deceitful conduct of Nationstar plaintiffs have been damaged financially in an amount to be determined at trial.

WHEREFORE PLAINTIFFS PREY FOR JUDGMENT as follows:

First and Second Causes of Action

1. Judgement in the sum of \$750,000
 2. As to the third cause of action plaintiffs are requesting in addition to damages punitive damages.
 3. Costs of Suit and such other further damages as the court deems appropriate.

Dated: February 26, 2014

BEDI & JOHNSON

/S/Lyle W. Johnson
By: Lyle W. Johnson, Esq.
Attorney for plaintiffs